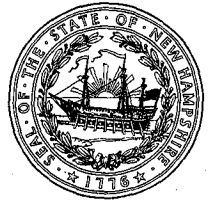




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

July 23, 2013

H. Curtis Spalding, Regional Administrator
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: State Implementation Plan Revision Submittal for Env-A 2100 – Particulate Matter and Visible Emissions Standards

Dear Administrator Spalding:

Pursuant to section 110 of the federal Clean Air Act as amended, the state of New Hampshire hereby submits for approval the subject proposed State Implementation Plan (SIP) revision and one exact electronic copy thereof on a disk (enclosed). As Governor Maggie Hassan's designee, I am requesting EPA's approval of this revision, which consists of the additions and amendments to administrative rule **Env-A 2100, Particulate Matter and Visible Emissions Standards**.

Env-A 2100 establishes emission standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any chapter, part, or section of this subtitle.

On August 31, 2000 and January 28, 2005, DES submitted earlier versions of Env-A 2100 as SIP revisions. DES is hereby withdrawing those submittals, as the current submittal contains the version of the rule that took effect on April 23, 2013, superseding the earlier versions.

This submittal contains all documentation necessary to satisfy the SIP completeness requirements pursuant to 40 CFR Part 51, Appendix V. The following administrative materials are included for your review:

- a. Evidence of the rule's adoption
- b. Evidence of legal authority
- c. A copy of the rule
- d. Evidence that all the State's legal requirements were followed in adopting the rule and submitting the SIP revision
- e. Evidence that the public notice was given in accordance with EPA procedures
- f. Certification that, if requested, the public hearing was held in accordance with the public notice
- g. A compilation of public comments and the State's responses thereto

One of the requirements of Appendix V is that the documentation include the date of adoption, as well as the effective date, of the rule. In accordance with RSA 541-A:14, an agency may adopt a rule after all procedures have been completed. DES adopts a rule on the day its Commissioner signs a letter advising that he has adopted the rule and files the adopted rule with the Director of the Office of Legislative Services (OLS). The rule takes effect the day after it is filed unless a different date is requested in the letter. The attachments hereto contain a letter from the DES Commissioner to the Director of the OLS, documenting the adoption of the rule, as well as written documentation from the OLS as to the filing and effective dates of the rule.

Should you have any questions regarding this submittal, please contact Karla McManus, Planning and Rules Manager, at karla.mcmanus@des.nh.gov or (603) 271-6854, or Barbara L. Hoffman, SIP Planning Manager, at barbara.hoffman@des.nh.gov or (603) 271-7874. Thank you for your assistance.

Sincerely,



Craig A. Wright
Acting Director
Air Resources Division

Enclosures

cc: Dave Conroy, EPA
Anne Arnold, EPA
Allison Simcox, EPA

EVIDENCE OF THE RULE'S ADOPTION

40 CFR Part 51, Appendix V, 2.1(b)

JILL K. SIEVEKING
DIRECTOR

STATE OF NEW HAMPSHIRE



OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE
107 NORTH MAIN STREET, ROOM 109
CONCORD, NEW HAMPSHIRE 03301-4951

April 22, 2013

Received from Commissioner, Department of Environmental Services

the following certified rule(s) filed with the Director of Legislative Services, in accordance with RSA 541-A, the Administrative Procedures Act.

Document # #10314
Relative to: Env-A 2100 - Particulate Matter and Visible Emissions Standards.
Number of Pages: 4
Adopted Date: 4-22-13
Filing Date: 4-22-13
Effective Date: 4-23-13
Expiration Date: 04/23/2023
Notes: N/A

In all communications with this office concerning the above rule(s), please cite the appropriate document number, as indicated above.

A handwritten signature in cursive script that reads "Jill K. Sieveking".

Jill K. Sieveking, Director
Office of Legislative Services

EVIDENCE OF LEGAL AUTHORITY

40 CFR Part 51, Appendix V, 2.1(c)

Laws of New Hampshire, RSA 125-C:4
Rulemaking Authority; Subpoena Power

TITLE X

PUBLIC HEALTH

CHAPTER 125-C

AIR POLLUTION CONTROL

Section 125-C:4

125-C:4 Rulemaking Authority; Subpoena Power. –

- I. The commissioner shall adopt rules under RSA 541-A, relative to:
 - (a) The prevention, control, abatement, and limitation of air pollution, including, but not limited to, open air source pollution, mobile source pollution, and stationary source pollution.
 - (b) Primary and secondary ambient air quality standards.
 - (c) Procedures to meet air pollution emergencies, as authorized by RSA 125-C:9.
 - (d) The establishment and operation of a statewide permit system, as authorized by RSA 125-C:6, XIV, RSA 125-C:11, I and RSA 125-C:11, I-a.
 - (e) Devices, in addition to those devices defined under RSA 125-C:2, subject to the permit requirements of RSA 125-C:11, as authorized by RSA 125-C:11, II.
 - (f) The exemption of certain devices and non-Title V sources from the permit requirements of RSA 125-C:11, I and the conformance of exempted devices to established standards, as authorized by RSA 125-C:11, I.
 - (g) The forms and information required on applications for temporary and permanent permits required under RSA 125-C:11, as authorized by RSA 125-C:12, I.
 - (h) Notification of and public hearing on permit applications, including exemptions from those requirements, as authorized by RSA 125-C:12, II.
 - (i) Fees for permit application and review, as authorized by RSA 125-C:12, IV-d.
 - (j) Procedures for permit application review, as authorized by RSA 125-C:11, IV, and criteria for permit denial, suspension or revocation, as authorized by RSA 125-C:13.
 - (k) Procedures for air testing and monitoring and recordkeeping, as authorized by RSA 125-C:6, XI.
 - (l) Procedures for receiving violation complaints and for rules enforcement, as authorized by RSA 125-C:15, I.
 - (m) Procedures for granting variances, as authorized by RSA 125-C:16.
 - (n) The manufacture, use, or sale of consumer products for purposes of implementing RSA 485:16-c.
 - (o) Applicability thresholds for emissions of particulate matter, mercury, and dioxin as provided in RSA 125-C:10-b, VII(f).
 - (p) The duration of time during which no additional best available control technology determination is required as provided in RSA 125-C:10-b, IV and VI.
 - (q) Procedures for establishing standards for and certification of any material, that is not an exempt fuel, to be combusted in a device at an affected source subject to RSA 125-C:10-b.

(r) Standards and testing requirements for biomass and eligible biomass fuel as authorized by RSA 125-C:6, XIV-a.

I-a. In adopting rules under paragraph I, the department may incorporate by reference standards issued by the California air resources board relative to certification and testing of vapor recovery equipment.

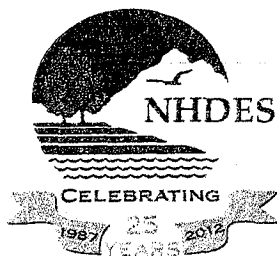
I-b. In adopting rules under subparagraph I(n), the department may incorporate by reference other state test methods and procedures that are referenced in the model rules of the Ozone Transport Commission (OTC) concerning consumer products, as defined in RSA 125-C:2, V-c.

II. The commissioner is authorized to issue subpoenas requiring the attendance of such witnesses and the production of such evidence and to administer such oaths and to take such testimony as he may deem necessary.

Source. 1979, 359:2. 1986, 202:8. 1996, 228:19, 104; 278:2, 3. 2001, 293:5. 2003, 137:3. 2004, 175:2, eff. May 27, 2004. 2005, 173:3, eff. June 29, 2005. 2008, 113:3, eff. Aug. 2, 2008. 2010, 183:6, eff. June 21, 2010.

COPY OF THE ACTUAL RULE

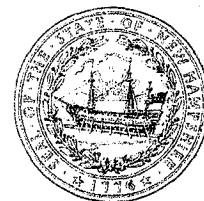
40 CFR Part 51, Appendix V, 2.1(d)



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



May 2, 2013

Jill K. Sieveking, Director
Office of Legislative Services
c/o Division of Administrative Rules
25 Capitol Street
State House Annex, Room 219
Concord, New Hampshire 03301-6312

Reference Doc. #10314, Env-A 2100

Dear Director Sieveking:

Pursuant to RSA 541-A:15, I-a, I hereby certify that the enclosed rules are the same in substance as the rules originally filed with the Office of Legislative Services, Division of Administrative Rules.

I further certify that the enclosed rules, as edited for format by the Division of Administrative Rules, is the official version of these rules which this agency is required to publish in an 8 1/2 x 11 inch loose-leaf format as part of the New Hampshire Code of Administrative Rules, under Chapter 5 of the *New Hampshire Drafting and Procedure Manual for Administrative Rules* and RSA 541-A:15, I.

Sincerely,

Thomas S. Burack
Commissioner

Enclosure

cc: Gretchen Hamel, DES Legal Unit
DES Public Information Center

cc: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Karla McManus, DES ARD Planning and Rules Manager

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-A 2100 PARTICULATE MATTER AND VISIBLE EMISSIONS STANDARDS

Statutory Authority: RSA 125-C:4:I, (a) and (e)

PART Env-A 2101 PURPOSE

Env-A 2101.01 Purpose. The purpose of this chapter is to establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of this subtitle.

Source. #6428-B, eff 1-18-97 (formerly Env-A 1203); ss by #8215, eff 11-24-04; ss by #10314, eff 4-23-13

Env-A 2101.02 Applicability. The rules in this chapter shall apply within New Hampshire as specified in Env-A 2102.01 and Env-A 2103.01.

Source. #10314, eff 4-23-13

PART Env-A 2102 EMISSION STANDARDS FOR PARTICULATE MATTER

Env-A 2102.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of particulate matter emissions discharged to the ambient air through a stack or through an exhaust and ventilation system.

(b) Those sources of particulate matter emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Source. #6428-B, eff 1-18-97 (formerly Env-A 1203); ss by #8215, eff 11-24-04 (from Env-A 2103); ss by #10314, eff 4-23-13

Env-A 2102.02 Definitions. "Exhaust and ventilation system" means any system that removes and transports particulate matter from the point of generation to the ambient air.

Source. #8215, eff 11-24-04 (from Env-A 2103); ss by #10314, eff 4-23-13

Env-A 2102.03 Emission Standards for Particulate Matter.

(a) For any stationary source or device installed after February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed the emission standards specified for "New Devices" as listed in Table 2102-1, in (c), below.

(b) For any stationary source or device installed prior to or on February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed the emission standards specified for "Existing Devices" as listed in Table 2102-1, in (c), below.

(c) Particulate matter emission standards shall be as set forth in Table 2102-1, below:

Table 2102-1 Particulate Matter Emission Standards

Process Weight Rate (tons per hour)	Emission Standard for "New Devices" (pounds per hour)	Emission Standard for "Existing Devices" (pounds per hour)
0.025	0.36	0.43
0.05	0.55	0.68

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Process Weight Rate (tons per hour)	Emission Standard for "New Devices" (pounds per hour)	Emission Standard for "Existing Devices" (pounds per hour)
0.25	1.53	1.99
0.5	2.58	3.17
2.5	7.58	9.35
5	12.0	14.85
10	19.2	23.62
30	40.0	49.31
40	42.5	51.03
60	46.3	55.55
90	49.0	58.88
100	51.2	61.53
500	69.0	82.75
1,000	77.6	93.11

Source. #8215, eff 11-24-04 (from Env-A 2103); ss by #10314, eff 4-23-13

Env-A 2102.04 Calculation of Particulate Matter Emission Standards.

(a) Where the process weight rate is not explicitly listed in Table 2102-1, the maximum allowable particulate matter emission rate shall be calculated using the applicable equation in (b) or (c), below, where:

- (1) "E" means the maximum allowable particulate matter emission rate in pounds per hour (lb/hr); and
- (2) "P" means the process weight rate in tons per hour (tons/hr).

(b) For a stationary source or device installed prior to or on February 18, 1972, if the process weight rate is:

- (1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 5.05, as shown in the formula below:

$$E = 5.05 p^{0.67}$$

- (2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 66.0, and then 48 shall be subtracted from that result, as shown in the formula below:

$$E = 66.0 p^{0.11} - 48$$

(c) For a stationary source or device installed after February 18, 1972, if the process weight rate is:

- (1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 4.10, as in the formula below:

$$E = 4.10 p^{0.67}$$

- (2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 55.0, and then 40 shall be subtracted from that result, as in the formula below:

$$E = 55.0 p^{0.11} - 40$$

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Source. #8215, eff 11-24-04 (from Env-A 2103); ss by #10314, eff 4-23-13

PART Env-A 2103 VISIBLE EMISSION STANDARDS

Env-A 2103.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of visible emissions.

(b) Those sources of visible emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Source. #6428-B, eff 1-18-97 (formerly Env-A 1203); ss by #8215, eff 11-24-04 (formerly Env-A 2107); ss by #10314, eff 4-23-13

Env-A 2103.02 Visible Emission Standards.

(a) The owner or operator shall not cause or allow visible emissions from any stationary source or device subject to this part to exceed an average of 20 percent opacity for any continuous 6-minute period.

(b) Opacity shall be determined in accordance with Env-A 807.

Source. #6428-B, eff 1-18-97 (formerly Env-A 1203); ss by #8215, eff 11-24-04 (formerly Env-A 2107); ss by #10314, eff 4-23-13

Env-A 2103.03 Affirmative Defense to Penalty Action.

(a) An owner or operator against whom a malfunction-based violation of Env-A 2103.02(a) is alleged in a penalty action may raise an affirmative defense to the penalty as specified in this section.

(b) To establish the affirmative defense specified in (a), above, the owner or operator of the facility shall:

- (1) Comply with Env-A 911.04 relative to reporting permit deviations; and
- (2) Prove by a preponderance of the evidence that all of the circumstances identified in (c), below, have occurred.

(c) The circumstances that support an affirmative defense for the violation of a visible emission standard during a malfunction shall be as follows:

- (1) The excess emissions were caused by:
 - a. A sudden and not reasonably preventable breakdown of air pollution control equipment or process equipment; or
 - b. The failure of a process to operate in the normal or usual manner;
- (2) The excess emissions did not stem from any activity or event that could have been planned for or reasonably foreseen and could not have been avoided by better operation and maintenance practices;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) Subject to (d), below, the air pollution control equipment or process equipment was maintained and operated in a manner consistent with good practice for minimizing emissions to the maximum extent practicable;
 - (4) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
 - (5) The owner or operator made repairs to the malfunctioning equipment or process as expeditiously as possible after the malfunction was discovered;
 - (6) The amount and duration of the excess emissions, including any bypass, were minimized to the maximum extent practicable during periods of such emissions;
 - (7) The owner or operator took all reasonable steps to minimize the impact of the excess emissions on ambient air quality;
 - (8) The owner or operator ensured the continued operation of any monitoring system except as necessary to correct the malfunction; and
 - (9) The owner or operator documented all actions taken during the period of excess emissions using contemporaneous operating logs or other reliable evidence.
- (d) The requirement in (c)(3), above, shall not be construed to automatically require the shutdown of process equipment to minimize emissions.
- (e) The affirmative defense provisions of this section shall not be available for:
- (1) Claims for injunctive relief; or
 - (2) Failure to meet federally promulgated visible emission standards specified in 40 CFR 60 and 40 CFR 63.
- (f) In considering an affirmative defense raised by an owner or operator, the department shall review the information provided pursuant to Env-A 911.04 and any other information the department deems material and relevant, which may include, but is not limited to, a physical inspection of the facility and review of documentation pertaining to the maintenance and operation of emission units and air pollution control equipment.
- (g) This section shall not be construed as limiting the authority of EPA or citizens under the Act.

Source. #10314, eff 4-23-13

Appendix

Rule Section(s)	State Statute Implemented
Env-A 2101	RSA 125-C:6, II
Env-A 2102	RSA 125-C:6, II
Env-A 2103	RSA 125-C:6, II

**EVIDENCE THAT NEW HAMPSHIRE FOLLOWED ALL
PROCEDURAL REQUIREMENTS**

40 CFR Part 51, Appendix V, 2.1(e)

REQUEST FOR FISCAL IMPACT STATEMENT

STATE OF NEW HAMPSHIRE

DATE November 1, 2012

FROM Thomas S. Burack
Commissioner

AT (OFFICE) DES

SUBJECT Request for Fiscal Impact Statement

To Legislative Budget Assistant

In accordance with NH RSA 541-A:5, enclosed please find a Request for Fiscal Impact Statement and a copy of the corresponding administrative rules for the following:

Env-A 2100: Particulate Matter and Visible Emissions Standards

Please fax the Fiscal Impact Statement to Gretchen Hamel at 271-8805.

If you have any questions, please contact Gretchen Hamel at 271-3137.

cc: Gretchen Hamel, Administrator, DES Legal Unit

cc: Karla McManus, ARD Planning and Rules Manager

**OFFICE OF LEGISLATIVE BUDGET ASSISTANT
REQUEST FOR FISCAL IMPACT STATEMENT (FIS)**

FIS Number	Rule Number	Env-A 2100
1. Agency Name & Address: Department of Environmental Services 29 Hazen Drive P.O. Box. 95 Concord, NH 03302-0095	2. RSA Authority:	RSA 125-C:4, I(a)&(e)
	3. Federal Authority:	N/A
	4. Type of Action:	
	Adoption	_____
	Amendment	_____
	Repeal	_____
	Readoption	_____
	Readoption w/amendment	<u> X </u>
	Interim rule	_____
	5. Have the rules expired?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
	Date Expired:	_____

6. Short Title: Particulate Matter and Visible Emissions Standards

7. Contact Person:

Name: Gretchen Hamel	Title: Administrator, Legal Unit
Address: Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	Phone #: 271-3137 Fax #: 271-8805

(1) Summarize the rule.

The existing rules, Env-A 2100, establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of the Air Resources rules. The rules are proposed to be readopted because they are scheduled to expire on November 24, 2012. Revisions are proposed to increase the clarity of the rules and to add elements required by New Hampshire rule drafting requirements.

(2) Is the cost associated with this rule mandated by the rule or by state statute? If the cost is mandated by statute, then the rule itself may not have a cost or benefit associated with it. Please state either the statute or chapter law that is instigating this rule.

There are no costs associated with the proposed rules, because even if the existing rules expire the sources that are subject to the rules would still be required to comply with the federal rule that incorporates them at 40 CFR §52.1520. (The numbering for this rule has changed; it was first approved into the State Implementation Plan (SIP) as Env-A 1203. EPA is reviewing the more current versions of these rules, and DES will submit these rules, when readopted, as revisions to the SIP.)

The rules are being adopted pursuant to RSA 125-C:4, I(a) and (e) to implement RSA 125-C:6, II and X.

(3) Compare the cost of the proposed rule with the cost of the existing rule, if there is an existing rule.

No changes to the substance of the rules are being proposed, so there is no difference between the costs of the proposed rules and the costs of the existing rules.

(4) Describe the costs and benefits to the state general fund which would result from this rule.

The proposed rules will not impose any costs on or provide any benefits to the state general fund.

REQUEST FOR FISCAL IMPACT STATEMENT (FIS) – Page 2

- (5) *Explain and cite the federal mandate for the proposed rule, if there is such a mandate. How would the mandate affect state funds?*

There is no federal mandate for the proposed rules. However, the existing rule is part of the SIP, which has been approved by the U.S. Environmental Protection Agency pursuant to Section 110 of the Clean Air Act, 42 U.S.C. §7410 and is required by the Federal Clean Air Act to meet the National Ambient Air Quality Standards.

- (6) *Describe the cost and benefits to any state special fund which would result.*

There will be no costs or benefits to any state special fund as a result of the proposed rules.

- (7) *Describe the costs and benefits to the political subdivisions of the state.*

The proposed rules will not impose any costs on political subdivisions of the state. Readopting these rules may provide financial benefits to political subdivisions in the form of reduced health care costs and fewer employee days lost to illness when compared with what would be incurred if particulate emissions were not controlled. Political subdivisions also may realize a financial benefit from businesses remaining in or moving into the tax base because of the cleaner air. Particulate matter or particle pollution, especially fine particles, contains microscopic solids or liquid droplets that are so small that they can get deep into the lungs and cause serious health problems. Numerous scientific studies have linked particle pollution exposure to a variety of problems, including: premature death in people with heart or lung disease; nonfatal heart attacks; irregular heartbeat; aggravated asthma; decreased lung function; and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing.

- (8) *Describe the costs and benefits to the citizens of the state.*

The proposed rules will not impose any costs on citizens of the state. Readopting these rules will provide financial benefits to citizens in the form of reduced health care costs over those that would be incurred if particulate emissions were not controlled. Particulate matter or particle pollution, especially fine particles, contains microscopic solids or liquid droplets that are so small that they can get deep into the lungs and cause serious health problems. Numerous scientific studies have linked particle pollution exposure to a variety of problems, including: premature death in people with heart or lung disease; nonfatal heart attacks; irregular heartbeat; aggravated asthma; decreased lung function; and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing.

- (9) *Describe the costs and benefits to any independently owned business, including a description of the specific reporting and recordkeeping requirements upon those employing fewer than 10 employees.*

The proposed rules will not impose any costs on any independently owned businesses. Readopting these rules will provide financial benefits to businesses in the form of fewer employee days lost to illnesses compared to what would be expected if particulate emissions were not controlled. Particulate matter or particle pollution, especially fine particles, contains microscopic solids or liquid droplets that are so small that they can get deep into the lungs and cause serious health problems. Numerous scientific studies have linked particle pollution exposure to a variety of problems, including: premature death in people with heart or lung disease; nonfatal heart attacks; irregular heartbeat; aggravated asthma; decreased lung function; and increased respiratory symptoms, such as irritation of the airways, coughing, or difficulty breathing.

The proposed rules will not change any existing reporting or recordkeeping requirements. There are no such requirements applying specifically to businesses employing fewer than 10 employees.

Readopt with amendment Env-A 2100, eff. 11-24-04 (doc. #8215), to read as follows:

CHAPTER Env-A 2100 PARTICULATE MATTER AND VISIBLE EMISSIONS STANDARDS

Statutory Authority: RSA 125-C:4:I(a) and (e)

PART Env-A 2101 PURPOSE ***AND APPLICABILITY***

Env-A 2101.01 Purpose. The purpose of this chapter is to establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of this subtitle.

Env-A 2101.02 Applicability. The rules in this chapter shall apply within New Hampshire as specified in Env-A 2102.01 and Env-A 2103.01.

PART Env-A 2102 EMISSION STANDARDS FOR PARTICULATE MATTER

Env-A 2102.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of particulate matter emissions discharged to the ambient air through a stack or ***through an*** exhaust and ventilation system.

(b) Those sources of particulate matter emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Env-A 2102.02 Definitions. "Exhaust and ventilation system" means any system that removes and transports particulate matter from the point of generation to the ambient air.

Env-A 2102.03 Emission Standards for Particulate Matter.

(a) For any stationary source or device installed after February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed ~~those~~ ***the*** emission standards specified for "New Devices" as listed in Table 2102-1, in (c), below.

(b) For any stationary source or device installed prior to or on February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed ~~those~~ ***the*** emission standards specified for "Existing Devices" as listed in Table 2102-1, in (c), below.

(c) Particulate matter emission standards shall be as set forth in Table 2102-1, below:

Table 2102-1 Particulate Matter Emission Standards

Process Weight Rate (tons per hour):	Emission Standard for "New Devices" Installed After February 18, 1972 (pounds per hour):	Emission Standard for "Existing Devices" Installed Prior to or on February 18, 1972 (pounds per hour):
0.025	0.36	0.43
0.05	0.55	0.68
0.25	1.53	1.99
0.5	2.58	3.17
2.5	7.58	9.35
5	12.0	14.85
10	19.2	23.62

Process Weight Rate (tons per hour):	Emission Standard for "New Devices" Installed After February 18, 1972 (pounds per hour):	Emission Standard for "Existing Devices" Installed Prior to or on February 18, 1972 (pounds per hour):
30	40.0	49.31
40	42.5	51.03
60	46.3	55.55
90	49.0	58.88
100	51.2	61.53
500	69.0	82.75
1,000	77.6	93.11

Env-A 2102.04 Calculation of Particulate Matter Emission Standards.

(a) Where the process weight rate is not explicitly ~~stated~~***listed*** in Table 2102-1, ~~above,~~ the maximum allowable particulate matter emission rate shall be calculated by ~~using~~ the ***applicable*** equation ~~which is for the particular process weight, as designated in (b) and-or (c), below, where:~~

(1) "E" means the maximum allowable particulate matter emission rate in pounds per hour (lb/hr); and

(2) "P" means the process weight rate in tons per hour (tons/hr).

(b) For an ~~an~~***Existing stationary source or dDevice***²² installed prior to or on February 18, 1972, ~~if the~~ ***with a process weight rate is:***

(1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 5.05, as ***shown*** in the formula below:

$$E = 5.05 P^{0.67}$$

(2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 66.0, and then 48 shall be subtracted from that result, as ***shown*** in the formula below:

$$E = 66.0 P^{0.11} - 48$$

(c) For a ~~New~~***stationary source or dDevice***²² installed after February 18, 1972, ~~if the~~ ***with a process weight rate is:***

(1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 4.10, as in the formula below:

$$E = 4.10 P^{0.67}$$

(2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 55.0, and then 40 shall be subtracted from that result, as in the formula below:

$$E = 55.0 P^{0.11} - 40$$

PART Env-A 2103 VISIBLE EMISSION STANDARDS

Env-A 2103.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of visible emissions.

(b) Those sources of visible emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Env-A 2103.02 Visible Emission Standards.

(a) The owner or operator shall not cause or allow visible emissions from any stationary source or device subject to this part to exceed an average of 20 percent opacity for any continuous 6-minute period, except for one period of 6 continuous minutes in any 60-minute period during startup, shutdown, or malfunction.

(b) Opacity shall be determined in accordance with Env-A 807.

APPENDIX

Rule Section(s)	State Statute(s) Implemented
Env-A 2101	RSA 125-C:6, II
Env-A 2102	RSA 125-C:6, II
Env-A 2103	RSA 125-C:6, II

FISCAL IMPACT STATEMENT

LBAO
FIS 12:174
11/08/12

Fiscal Impact Statement for Department of Environmental Services rules governing Particulate Matter and Visible Emissions Standards. [Env-A 2100]

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds. The existing rule is part of the state implementation plan which has been approved by the US Environmental Protection Agency pursuant to Section 110 of the Clean Air Act (42 U.S.C. § 7410) and is required by the Federal Clean Air Act to meet the National Ambient Air Quality Standards.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

RULEMAKING NOTICE FILING

STATE OF NEW HAMPSHIRE

DATE November 9, 2012

FROM Thomas S. Burack
Commissioner

AT (OFFICE) DES

SUBJECT Rulemaking Notice

TO Office of Legislative Services
Division of Administrative Rules

Please accept for filing the enclosed Rulemaking Notice for the following rules:

Env-A 2100: Particulate Matter and Visible Emissions Standards

Questions from OLS regarding the Rulemaking Notice should be directed to Gretchen Hamel at 271-3137.

Questions from the public regarding the proposed rules, public hearing, or public comment period should be directed to Karla McManus at 271-6854.

Enclosures

cc: Gretchen Hamel, DES Legal Unit Administrator

ec: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Karla McManus, DES ARD Planning and Rules Manager
ARD Distribution list

RULEMAKING NOTICE

Notice Number _____	Rule Number _____	Env-A 2100
1. Agency Name & Address:	2. RSA Authority:	RSA 125-C:4, I(a) & (e)
NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	3. Federal Authority:	N/A
	4. Type of Action:	
	Adoption	_____
	Amendment	_____
	Repeal	_____
	Readoption	_____
	Readoption w/amendment	X

5. Short Title: Particulate Matter and Visible Emissions Standards

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules, Env-A 2100, establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of this subtitle. The rules are proposed to be readopted because they are scheduled to expire on November 24, 2012; **pursuant to RSA 541-A:14-a, I, the existing rules will continue in effect for the duration of this readoption proceeding.** Revisions are proposed to increase the clarity of the rules and to add elements required by New Hampshire rule drafting requirements.

6. (b) Brief description of the groups affected:

The rules affect owners and operators of certain stationary sources or devices that emit particulate matter and visible emissions and are not specifically regulated by any other chapter, part, or section of this subtitle.

6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented
Env-A 2101	RSA 125-C:6, II
Env-A 2102	RSA 125-C:6, II
Env-A 2103	RSA 125-C:6, II

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Karla McManus	Title:	Planning and Rules Manager
Address:	NH Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-6854
		Fax#:	(603) 271-1381
		E-mail:	Karla.McManus@des.nh.gov

The rules also can be viewed in PDF at
<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Tuesday, January 15, 2013 by close of business at 4:00 pm.**

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, January 4, 2013 at 10:00 am.**

Place: **Room 112, DES Offices, 29 Hazen Drive, Concord NH**

RULEMAKING NOTICE - Page 2

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 12:174, dated 11/08/12:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds. The existing rule is part of the state implementation plan which has been approved by the US Environmental Protection Agency pursuant to Section 110 of the Clean Air Act (42 U.S.C. § 7410) and is required by the Federal Clean Air Act to meet the National Ambient Air Quality Standards.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

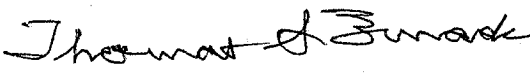
C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

None of the sources affected by these rules is owned by a political subdivision. Accordingly, the proposed rules do not violate Part I, Article 28-a of the New Hampshire Constitution because they do not assign any new, modified, or expanded programs or responsibilities to political subdivisions of the state in such a way as to necessitate local expenditures.

STATE OF NEW HAMPSHIRE

 **DATE** January 24, 2013

FROM Thomas S. Burack
Commissioner **AT (OFFICE)** DES

SUBJECT Draft Final Proposed Rule: Hearing and Public Comment Period
NN 2012-163 AND NN 2012-164

To Office of Legislative Services
Division of Administrative Rules

In accordance with NH RSA 541-A:11, I(c), enclosed please find the notice entitled Draft Final Proposed Rule: Hearing and Public Comment Period for the following rules:

Env-A 2100: Particulate Matter and Visible Emissions Standards

Env-A 2400: Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations

Questions from OLS regarding the notice should be directed to Gretchen Hamel at 271-3137.

Enclosures

cc: Gretchen Hamel, DES Legal Unit Administrator

ec: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Karla McManus, DES ARD Planning and Rules Manager

**DRAFT FINAL PROPOSED RULE:
HEARING AND PUBLIC COMMENT PERIOD**

Notice Number **2012-163**

Rule Number **Env-A 2100**

1. Agency Name & Address:

NH Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

2. RSA Authority:

RSA 125-C:4, I(a)&(e)

3. Federal Authority:

N/A

4. Type of Action:

Adoption

Amendment

Repeal

Readoption

Readoption w/ amendment X

5. Short Title: **Particulate Matter and Visible Emissions Standards**

In accordance with RSA 541-A:11, I(c), public comment is being solicited on a draft of final proposed rules in the rulemaking proceeding for which notice first appeared in the Rulemaking Register on November 15, 2012 under Notice Number 2012-163.

6. A public hearing on the draft final proposed rules has been scheduled for:

Date and Time: **Friday, March 8, 2013, 10:30 AM**

Place: **Room 112, DES Offices, 29 Hazen Drive, Concord NH**

7. The deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified, is: **4:00 PM on Friday, March 8, 2013**

☒ Fax

☒ E-mail

☐ Other format (specify):

8. Contact person for copies of the draft final proposed rules and questions including requests to accommodate persons with disabilities:

Name: **Karla McManus**

Title: **ARD Planning and Rules Manager**

Address: **NH Dept. of Environmental Services
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095**

Phone #: **(603) 271-6854**

Fax #: **(603) 271-1381**

E-mail: **Karla.McManus@des.nh.gov**

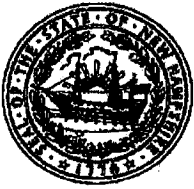
The draft final proposed rules can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-

800-735-2964 or dial 711 (in NH)

RULEMAKING REGISTER



NEW HAMPSHIRE RULEMAKING REGISTER

OFFICE OF LEGISLATIVE SERVICES

ROOM 219, STATE HOUSE ANNEX

25 CAPITOL STREET

CONCORD, NEW HAMPSHIRE 03301-6312

Tel. (603) 271-3680

Website: www.gencourt.state.nh.us/rules/index.html

TDD Access:

Relay NH 1-800-735-2964

Fax (603) 271-7871

VOLUME XXXII, Number 46, November 15, 2012

TABLE OF CONTENTS

	<u>Page No.</u>
1. <u>OFFICE OF LEGISLATIVE SERVICES</u>	
a. List of Notices of Proposed Rules NN 2012-157 through NN 2012-168	-i-
b. Notices of Proposed Rules	1

NOTE: POSSIBLE RULE EXTENSION

If the proposed rules contain existing, regular rules being readopted or readopted with amendments, and are not adopted and effective until after the expiration date(s) of the existing rules(s), then the existing rules will nevertheless continue in effect pursuant to RSA 541-A:14-a until the proposed rules are adopted and effective.

2. COMMITTEE (JLCAR)

REGULAR MEETING: **Thursday, November 15, 2012 9:00 a.m.**
Rooms 305/307, Legislative Office Building

CONTINUED MEETING: **Thursday, December 6, 2012 9:00 a.m.**
Rooms 305/307, Legislative Office Building



THANKSGIVING HOLIDAYS



Publication of November 21, 2012 Rulemaking Register

Thursday, November 22 and Friday, November 23 are state holidays. The Register that week will be published on Wednesday, November 21.

Deadline for November 29, 2012 Rulemaking Register

The deadline for filing rulemaking notices to be published in the November 29 Register will be the end of work day Wednesday, November 21.

NEW HAMPSHIRE RULEMAKING REGISTER

Notices of Proposed Rules

<u>Notice Number</u>	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>	<u>Page No.</u>
2012-157	He-W 606.78(a) intro and (a)(6)	Department of Health and Human Services Former Division of Human Services Acceptable Verification of the Equity Value of Life Insurance for All Categories of Financial and Medical Assistance.	1
2012-158	Fis 607.02, 608.03, & 1102.01	Fish and Game Department Miscellaneous Rules: Clarification to Scallop Dredge Ring Size, Shellfish Report, and Special Wildlife Permit.	3
2012-159	Nur 300	Board of Nursing Licensing Requirements.	5
2012-160	Nur 400	Board of Nursing Continued Status.	8
2012-161	Nur 700	Board of Nursing Nursing Assistants.	11
2012-162	Nur 800	Board of Nursing Certificate of Medication Administration for Licensed Nursing Assistants and Medication Administration Education Program.	13
2012-163	Env-A 2100	Department of Environmental Services Air Related Programs Particulate Matter and Visible Emissions Standards.	15
2012-164	Env-A 2400	Department of Environmental Services Air Related Programs Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations.	17
2012-165	Env-A 2700	Department of Environmental Services Air Related Programs Hot Mix Asphalt Plants.	19
2012-166	Occ 211.03	Governing Board of Occupational Therapists Pre-Hearing Disclosure of Witnesses and Exhibits.	21
2012-167	Occ 302.02 & 302.04	Governing Board of Occupational Therapists Required Documents.	23
2012-168	Occ 501.01 & 502.02	Governing Board of Occupational Therapists Definition of AOTA and Ethical Standards.	25

Notice Number	2012-163	Rule Number	Env-A 2100
1. Agency Name & Address:	2. RSA Authority: RSA 125-C:4, I(a) & (e)		
NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	3. Federal Authority: N/A		
	4. Type of Action:		
	Adoption		
	Amendment		
	Repeal		
	Readoption		
	Readoption w/amendment		X

5. Short Title: Particulate Matter and Visible Emissions Standards

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules, Env-A 2100, establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of this subtitle. The rules are proposed to be readopted because they are scheduled to expire on November 24, 2012; pursuant to RSA 541-A:14-a, I, the existing rules will continue in effect for the duration of this readoption proceeding. Revisions are proposed to increase the clarity of the rules and to add elements required by New Hampshire rule drafting requirements.

6. (b) Brief description of the groups affected:

The rules affect owners and operators of certain stationary sources or devices that emit particulate matter and visible emissions and are not specifically regulated by any other chapter, part, or section of this subtitle.

6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented
Env-A 2101	RSA 125-C:6, II
Env-A 2102	RSA 125-C:6, II
Env-A 2103	RSA 125-C:6, II

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Karla McManus	Title:	Planning and Rules Manager
Address:	NH Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-6854
		Fax#:	(603) 271-1381
		E-mail:	Karla.McManus@des.nh.gov

The rules also can be viewed in PDF at
<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: Tuesday, January 15, 2013 by close of business at 4:00 pm.

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: Friday, January 4, 2013 at 10:00 am.

Place: Room 112, DES Offices, 29 Hazen Drive, Concord NH

NN 2012-163 Continued

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 12:174, dated 11/08/12:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds. The existing rule is part of the state implementation plan which has been approved by the US Environmental Protection Agency pursuant to Section 110 of the Clean Air Act (42 U.S.C. § 7410) and is required by the Federal Clean Air Act to meet the National Ambient Air Quality Standards.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

None of the sources affected by these rules is owned by a political subdivision. Accordingly, the proposed rules do not violate Part I, Article 28-a of the New Hampshire Constitution because they do not assign any new, modified, or expanded programs or responsibilities to political subdivisions of the state in such a way as to necessitate local expenditures.



NEW HAMPSHIRE RULEMAKING REGISTER

OFFICE OF LEGISLATIVE SERVICES

ROOM 219, STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6312
Tel. (603) 271-3680

Website: www.gencourt.state.nh.us/rules/index.html

TDD Access:
Relay NH 1-800-735-2964

Fax (603) 271-7871

VOLUME XXXIII, Number 5, January 31, 2013

TABLE OF CONTENTS

1.	<u>OFFICE OF LEGISLATIVE SERVICES</u>	<u>Page No.</u>
a.	List of Notices of Proposed Rules NN 2013-6 through NN 2013-8	-i-
b.	Notices of Proposed Rules	1
c.	Draft Final Proposed Rule Hearing and Public Comment Period for: DEPARTMENT OF ENVIRONMENTAL SERVICES Air Related Programs NN 2012-163 - Env-A 2100 Particulate Matter and Visible Emission Standards	8
	Air Related Programs NN 2012-164 - Env-A 2400 Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations	9
d.	Executive Order Number 2013-1 An Order establishing the Governor's consensus revenue estimating panel to enhance the State's ability to manage its fiscal policies	10

NOTE: POSSIBLE RULE EXTENSION

If the proposed rules contain existing, regular rules being readopted or readopted with amendments, and are not adopted and effective until after the expiration date(s) of the existing rules(s), then the existing rules will nevertheless continue in effect pursuant to RSA 541-A:14-a until the proposed rules are adopted and effective.

2. COMMITTEE (JLCAR)

REGULAR MEETING **Friday, February 15, 2013 9:00 a.m.**
Rooms 305/307, Legislative Office Building

CONTINUED MEETING: **Friday, March 1, 2013 9:00 a.m.**
Rooms 305/307, Legislative Office Building

NEW HAMPSHIRE RULEMAKING REGISTER

Notices of Proposed Rules

Notice Number	Rule Number	Agency and Short Title of Rule	Page No.
2013-6	He-W 628.02	Department of Health and Human Services Former Division of Human Services Deprivation Due to Incapacity for the Financial Assistance to Needy Families Program.	1
2013-7	Box 100-200	Boxing and Wrestling Commission Organizational and Practice and Procedure Rules.	3
2013-8	Box 300-800	Boxing and Wrestling Commission Fighting Sport Rules.	5

JLCAR MEETING DATES AND RELATED FILING DEADLINES JANUARY-JUNE, 2013

The JLCAR has voted to hold its regularly scheduled meetings for January through June, 2013 on the third Friday of the month as listed below. The minimum 14-day "deadline" prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Fridays to address items postponed from the prior regular meetings.

Regular Meeting Filing Deadline	Regular Meeting Date	Continued Meeting Date
February 1	February 15	March 1
March 1	March 15	April 5
April 5	April 19	May 3
May 3	May 17	June 7
June 7	June 21	June 28

JLCAR MEETING DATES AND RELATED FILING DEADLINES JULY-DECEMBER, 2013

The JLCAR has voted to hold its regularly scheduled monthly meetings for July through December, 2013 on the third Thursdays listed below. The minimum 14-day "deadline" prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Thursdays to address any items postponed from the prior regular meetings.

Regular Meeting Filing Deadline	Regular Meeting Date	Continued Meeting Date
July 3 (Wednesday)	July 18	August 1
August 1	August 15	September 5
September 5	September 19	October 3
October 3	October 17	November 7
November 7	November 21	December 5
December 5	December 19	None

**DRAFT FINAL PROPOSED RULE:
HEARING AND PUBLIC COMMENT PERIOD**

Notice Number	2012-163	Rule Number	Env-A 2100																
1. Agency Name & Address: NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	<table style="width: 100%; border-collapse: collapse;"><tr><td style="width: 50%; vertical-align: top;">2. RSA Authority: RSA 125-C:4, I(a)&(e)</td><td style="width: 50%;"></td></tr><tr><td style="vertical-align: top;">3. Federal Authority: N/A</td><td></td></tr><tr><td style="vertical-align: top;">4. Type of Action:</td><td></td></tr><tr><td style="padding-left: 20px;">Adoption</td><td>_____</td></tr><tr><td style="padding-left: 20px;">Amendment</td><td>_____</td></tr><tr><td style="padding-left: 20px;">Repeal</td><td>_____</td></tr><tr><td style="padding-left: 20px;">Readoption</td><td>_____</td></tr><tr><td style="padding-left: 20px;">Readoption w/ amendment</td><td style="text-align: center;">X</td></tr></table>			2. RSA Authority: RSA 125-C:4, I(a)&(e)		3. Federal Authority: N/A		4. Type of Action:		Adoption	_____	Amendment	_____	Repeal	_____	Readoption	_____	Readoption w/ amendment	X
2. RSA Authority: RSA 125-C:4, I(a)&(e)																			
3. Federal Authority: N/A																			
4. Type of Action:																			
Adoption	_____																		
Amendment	_____																		
Repeal	_____																		
Readoption	_____																		
Readoption w/ amendment	X																		

5. Short Title: Particulate Matter and Visible Emissions Standards

In accordance with RSA 541-A:11, I(c), public comment is being solicited on a draft of final proposed rules in the rulemaking proceeding for which notice first appeared in the Rulemaking Register on November 15, 2012 under Notice Number 2012-163.

6. A public hearing on the draft final proposed rules has been scheduled for:

Date and Time: Friday, March 8, 2013, 10:30 AM

Place: Room 112, DES Offices, 29 Hazen Drive, Concord NH

7. The deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified, is: 4:00 PM on Friday, March 8, 2013

☒ Fax

☒ E-mail

☐ Other format (specify):

8. Contact person for copies of the draft final proposed rules and questions including requests to accommodate persons with disabilities:

Name: Karla McManus

Title: ARD Planning and Rules Manager

Address: NH Dept. of Environmental Services
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

Phone #: (603) 271-6854

Fax #: (603) 271-1381

E-mail: Karla.McManus@des.nh.gov

The draft final proposed rules can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-

800-735-2964 or dial 711 (in NH)

**DRAFT FINAL PROPOSED RULE:
HEARING AND PUBLIC COMMENT PERIOD**

Notice Number <u>2012-164</u>	Rule Number <u>Env-A 2400</u>
1. Agency Name & Address: NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority: <u>RSA 125-C:4, I(a)</u> 3. Federal Authority: <u>N/A</u> 4. Type of Action: Adoption _____ Amendment _____ Repeal _____ Readoption _____ Readoption w/ amendment <u>X</u>
5. Short Title: <u>Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations</u>	

In accordance with RSA 541-A:11, I(c), public comment is being solicited on a draft of final proposed rules in the rulemaking proceeding for which notice first appeared in the Rulemaking Register on November 15, 2012 under Notice Number 2012-164.

6. A public hearing on the draft final proposed rules has been scheduled for:

Date and Time: Friday, March 8, 2013, 10:30 AM

Place: Room 112, DES Offices, 29 Hazen Drive, Concord NH

7. The deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified, is: 4:00 PM on Friday, March 8, 2013

☒ Fax

☒ E-mail

☐ Other format (specify):

8. Contact person for copies of the draft final proposed rules and questions including requests to accommodate persons with disabilities:

Name: Karla McManus

Title: ARD Planning and Rules Manager

Address: NH Dept. of Environmental Services
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

Phone #: (603) 271-6854

Fax #: (603) 271-1381

E-mail: Karla.McManus@des.nh.gov

The draft final proposed rules can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-

800-735-2964 or dial 711 (in NH)

ANNOTATIONS TO INITIAL PROPOSAL FROM THE OFFICE OF
LEGISLATIVE SERVICES

NOV 08 2012

RULEMAKING NOTICE

Notice Number	2012-163	Rule Number	Env-A 2100
1. Agency Name & Address:	2. RSA Authority: RSA 125-C:4, I(a) & (e)		
NH Department of Environmental Services	3. Federal Authority: N/A		
29 Hazen Drive	4. Type of Action:		
P.O. Box 95	Adoption _____		
Concord, NH 03302-0095	Amendment _____		
<i>CONSENT</i>	Repeal _____		
	Readoption _____		
	Readoption w/amendment X		

5. Short Title: Particulate Matter and Visible Emissions Standards

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules, Env-A 2100, establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of this subtitle. The rules are proposed to be readopted because they are scheduled to expire on November 24, 2012; pursuant to RSA 541-A:14-a, I, the existing rules will continue in effect for the duration of this readoption proceeding. Revisions are proposed to increase the clarity of the rules and to add elements required by New Hampshire rule drafting requirements.

6. (b) Brief description of the groups affected:

The rules affect owners and operators of certain stationary sources or devices that emit particulate matter and visible emissions and are not specifically regulated by any other chapter, part, or section of this subtitle.

6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Number	State Statute(s) Implemented
Env-A 2101	RSA 125-C:6, II
Env-A 2102	RSA 125-C:6, II
Env-A 2103	RSA 125-C:6, II

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Karla McManus	Title:	Planning and Rules Manager
Address:	NH Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-6854
		Fax#:	(603) 271-1381
		E-mail:	Karla.McManus@des.nh.gov

The rules also can be viewed in PDF at

<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: Tuesday, January 15, 2013 by close of business at 4:00 pm.

☒ Fax ☒ E-mail ☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: Friday, January 4, 2013 at 10:00 am.

Place: Room 112, DES Offices, 29 Hazen Drive, Concord NH

DRAFT FINAL PROPOSAL FILING

Readopt with amendment Env-A 2100, eff. 11-24-04 (doc. #8215), to read as follows:

CHAPTER Env-A 2100 PARTICULATE MATTER AND VISIBLE EMISSIONS STANDARDS

Statutory Authority: RSA 125-C:4:I(a) and (e)

PART Env-A 2101 PURPOSE AND APPLICABILITY

Env-A 2101.01 Purpose. The purpose of this chapter is to establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of this subtitle.

Env-A 2101.02 Applicability. The rules in this chapter shall apply within New Hampshire as specified in Env-A 2102.01 and Env-A 2103.01.

PART Env-A 2102 EMISSION STANDARDS FOR PARTICULATE MATTER

Env-A 2102.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of particulate matter emissions discharged to the ambient air through a stack or through an exhaust and ventilation system.

(b) Those sources of particulate matter emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Env-A 2102.02 Definitions. "Exhaust and ventilation system" means any system that removes and transports particulate matter from the point of generation to the ambient air.

Env-A 2102.03 Emission Standards for Particulate Matter.

(a) For any stationary source or device installed after February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed the emission standards specified for "New Devices" as listed in Table 2102-1, in (c), below.

(b) For any stationary source or device installed prior to or on February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed the emission standards specified for "Existing Devices" as listed in Table 2102-1, in (c), below.

(c) Particulate matter emission standards shall be as set forth in Table 2102-1, below:

Table 2102-1 Particulate Matter Emission Standards

Process Weight Rate (tons per hour)	Emission Standard for "New Devices" (pounds per hour)	Emission Standard for "Existing Devices" (pounds per hour)
0.025	0.36	0.43
0.05	0.55	0.68
0.25	1.53	1.99
0.5	2.58	3.17
2.5	7.58	9.35
5	12.0	14.85
10	19.2	23.62
30	40.0	49.31
40	42.5	51.03

Process Weight Rate (tons per hour)	Emission Standard for "New Devices" (pounds per hour)	Emission Standard for "Existing Devices" (pounds per hour)
60	46.3	55.55
90	49.0	58.88
100	51.2	61.53
500	69.0	82.75
1,000	77.6	93.11

Env-A 2102.04 Calculation of Particulate Matter Emission Standards.

(a) Where the process weight rate is not explicitly listed in Table 2102-1, the maximum allowable particulate matter emission rate shall be calculated using the applicable equation in (b) or (c), below, where:

(1) "E" means the maximum allowable particulate matter emission rate in pounds per hour (lb/hr); and

(2) "P" means the process weight rate in tons per hour (tons/hr).

(b) For a stationary source or device installed prior to or on February 18, 1972, if the process weight rate is:

(1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 5.05, as shown in the formula below:

$$E = 5.05 P^{0.67}$$

(2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 66.0, and then 48 shall be subtracted from that result, as shown in the formula below:

$$E = 66.0 P^{0.11} - 48$$

(c) For a stationary source or device installed after February 18, 1972, if the process weight rate is:

(1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 4.10, as in the formula below:

$$E = 4.10 P^{0.67}$$

(2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 55.0, and then 40 shall be subtracted from that result, as in the formula below:

$$E = 55.0 P^{0.11} - 40$$

PART Env-A 2103 VISIBLE EMISSION STANDARDS

Env-A 2103.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of visible emissions.

(b) Those sources of visible emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Env-A 2103.02 Visible Emission Standards.

(a) The owner or operator shall not cause or allow visible emissions from any stationary source or device subject to this part to exceed an average of 20 percent opacity for any continuous 6-minute period, ~~except for one period of 6 continuous minutes in any 60 minute period during startup, shutdown, or malfunction.~~

(b) Opacity shall be determined in accordance with Env-A 807.

Env-A 2103.03 Affirmative Defenses.

(a) *An owner or operator against whom a violation of Env-A 2103.02(a) is alleged may raise an affirmative defense as specified in this section.*

(b) *To establish an affirmative defense, the owner or operator of the facility shall:*

(1) *Comply with Env-A 911.04 relative to reporting permit deviations; and*

(2) *Prove by a preponderance of the evidence that one or more of the circumstances identified in (c) or (e), below, as applicable, has occurred.*

(c) *The circumstances that support an affirmative defense for the violation of a visible emission standard during a malfunction shall be as follows:*

(1) *The excess emissions were caused by:*

a. *A sudden and not reasonably preventable breakdown of air pollution control equipment or process equipment; or*

b. *The failure of a process to operate in the normal or usual manner;*

(2) *The excess emissions did not stem from any activity or event that could have been planned for or reasonably foreseen and avoided;*

(3) *The owner or operator made repairs to the malfunctioning equipment or process as expeditiously as possible after the malfunction was discovered;*

(4) *The amount and duration of the excess emissions, including any bypass, were minimized to the extent practicable during periods of such emissions;*

(5) *The owner or operator took reasonable steps to minimize the impact of the excess emissions on ambient air quality;*

(6) *The owner or operator ensured the continued operation of any monitoring system except as necessary to correct the malfunction;*

(7) *The owner or operator documented all actions taken during the period of excess emissions using contemporaneous operating logs or other reliable evidence;*

(8) *The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and*

(9) *Subject to (d), below, the air pollution control equipment or process equipment was maintained and operated in a manner consistent with good practice for minimizing emissions to the maximum extent practicable.*

(d) The provision in (c)(9), above, shall not be construed to automatically require the shutdown of process equipment to minimize emissions.

(e) The circumstances that support an affirmative defense for the violation of a visible emission standard during startup or shutdown, shall be as follows:

(1) The period of excess emissions that occurred during each startup or shutdown was short and infrequent and could not have been prevented through reasonable planning and design;

(2) The excess emissions were not part of a recurring pattern indicative of inadequate operation or maintenance;

(3) If the excess emissions were caused by a bypass, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(4) The frequency and duration of operation in startup and shutdown modes were minimized to the extent practicable;

(5) The owner or operator took reasonable steps to minimize the impact of excess emissions on ambient air quality;

(6) The owner or operator ensured the continued operation of any monitoring system except as necessary to correct the malfunction;

(7) The owner or operator documented all actions taken during the period of excess emissions using contemporaneous operating logs or other reliable evidence; and

(8) Subject to (f), below, the facility was operated in a manner consistent with good practice for minimizing emissions during startup or shutdown.

(f) The provision in (e)(8) shall not be construed to:

(1) Require the use or installation of additional or redundant pollution control equipment not otherwise required; or

(2) To automatically require the shutdown of process equipment to minimize emissions.

(g) The affirmative defense provisions of this section shall not be available for:

(1) Claims for injunctive relief; or

(2) Failure to meet federally promulgated visible emission standards specified in 40 CFR 60 and 40 CFR 63.

(h) In considering an affirmative defense raised by an owner or operator, the department shall review the information provided pursuant to Env-A 911.04 and any other information the department deems material and relevant, which may include, but is not limited to, a physical inspection of the facility and review of documentation pertaining to the maintenance and operation of emission units and air pollution control equipment.

(i) This section shall not be construed as limiting the authority of EPA or citizens under the Act.

APPENDIX

Rule Section(s)	State Statute(s) Implemented
Env-A 2101	RSA 125-C:6, II
Env-A 2102	RSA 125-C:6, II
Env-A 2103	RSA 125-C:6, II

FINAL PROPOSAL FILING

STATE OF NEW HAMPSHIRE

DATE March 28, 2013

FROM Thomas S. Burack
Commissioner **AT (OFFICE)** DES

SUBJECT Final Proposal #2012-163

TO Office of Legislative Services
Division of Administrative Rules

In accordance with RSA 541-A:12, enclosed please find the Final Proposal Cover Sheet with attachments, including the corresponding rules, for the following:

Env-A 2100: Particulate Matter and Visible Emissions Standards

If you have any questions, please contact Gretchen Hamel at 271-3137.

Enclosures

cc: Gretchen Hamel, Administrator, DES Legal Unit

ec: Karla McManus, ARD Planning and Rules Manager

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2012-163

Rule Number Env-A 2100

1. Agency Name & Address:

NH Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

2. RSA Authority: RSA 125-C:4, I(a) & (e)

3. Federal Authority: n/a

4. Type of Action:

- ☐ Adoption
☐ Amendment
☐ Repeal
☐ Readoption
☒ Readoption w/amendment

5. Short Title: Particulate Matter and Visible Emissions Standards

6. Contact person for copies and questions:

Name: Karla McManus

Title: Planning and Rules Manager

Address: NH Dept. of Environmental Services
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

Phone #: (603) 271-6854

7. Yes ☐ No ☒ Agency requests Committee legal counsel review and delayed Committee review pursuant to RSA 541-A:12, I-a

8. The rulemaking notice appeared in the Rulemaking Register on November 15, 2012.

9. Yes ☐ N/A ☒ Agency notified policy committees, or House Speaker and Senate President, pursuant to RSA 541-A:10, I, because this is the first time this rule or its amendments have been proposed to implement newly-enacted state authority.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET
AND 2 COPIES OF THE FOLLOWING:
(and numbered correspondingly)**

10. The "Final Proposal-Fixed Text", including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

11. Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes ☒ N/A ☐ The "Final Proposal-Annotated Text" indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

13. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

Readopt with amendment Env-A 2100, eff. 11-24-04 (doc. #8215), to read as follows:

CHAPTER Env-A 2100 PARTICULATE MATTER AND VISIBLE EMISSIONS STANDARDS

Statutory Authority: RSA 125-C:4:I(a) and (e)

PART Env-A 2101 PURPOSE AND APPLICABILITY

Env-A 2101.01 Purpose. The purpose of this chapter is to establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of this subtitle.

Env-A 2101.02 Applicability. The rules in this chapter shall apply within New Hampshire as specified in Env-A 2102.01 and Env-A 2103.01.

PART Env-A 2102 EMISSION STANDARDS FOR PARTICULATE MATTER

Env-A 2102.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of particulate matter emissions discharged to the ambient air through a stack or through an exhaust and ventilation system.

(b) Those sources of particulate matter emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Env-A 2102.02 Definitions. "Exhaust and ventilation system" means any system that removes and transports particulate matter from the point of generation to the ambient air.

Env-A 2102.03 Emission Standards for Particulate Matter.

(a) For any stationary source or device installed after February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed the emission standards specified for "New Devices" as listed in Table 2102-1, in (c), below.

(b) For any stationary source or device installed prior to or on February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed the emission standards specified for "Existing Devices" as listed in Table 2102-1, in (c), below.

(c) Particulate matter emission standards shall be as set forth in Table 2102-1, below:

Table 2102-1 Particulate Matter Emission Standards

Process Weight Rate (tons per hour)	Emission Standard for "New Devices" (pounds per hour)	Emission Standard for "Existing Devices" (pounds per hour)
0.025	0.36	0.43
0.05	0.55	0.68
0.25	1.53	1.99
0.5	2.58	3.17
2.5	7.58	9.35
5	12.0	14.85
10	19.2	23.62
30	40.0	49.31
40	42.5	51.03

Process Weight Rate (tons per hour)	Emission Standard for "New Devices" (pounds per hour)	Emission Standard for "Existing Devices" (pounds per hour)
60	46.3	55.55
90	49.0	58.88
100	51.2	61.53
500	69.0	82.75
1,000	77.6	93.11

Env-A 2102.04 Calculation of Particulate Matter Emission Standards.

(a) Where the process weight rate is not explicitly listed in Table 2102-1, the maximum allowable particulate matter emission rate shall be calculated using the applicable equation in (b) or (c), below, where:

(1) "E" means the maximum allowable particulate matter emission rate in pounds per hour (lb/hr); and

(2) "P" means the process weight rate in tons per hour (tons/hr).

(b) For a stationary source or device installed prior to or on February 18, 1972, if the process weight rate is:

(1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 5.05, as shown in the formula below:

$$E = 5.05 P^{0.67}$$

(2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 66.0, and then 48 shall be subtracted from that result, as shown in the formula below:

$$E = 66.0 P^{0.11} - 48$$

(c) For a stationary source or device installed after February 18, 1972, if the process weight rate is:

(1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 4.10, as in the formula below:

$$E = 4.10 P^{0.67}$$

(2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 55.0, and then 40 shall be subtracted from that result, as in the formula below:

$$E = 55.0 P^{0.11} - 40$$

PART Env-A 2103 VISIBLE EMISSION STANDARDS

Env-A 2103.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of visible emissions.

(b) Those sources of visible emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Env-A 2103.02 Visible Emission Standards.

(a) The owner or operator shall not cause or allow visible emissions from any stationary source or device subject to this part to exceed an average of 20 percent opacity for any continuous 6-minute period.

(b) Opacity shall be determined in accordance with Env-A 807.

Env-A 2103.03 Affirmative Defense to Penalty Action.

(a) An owner or operator against whom a malfunction-based violation of Env-A 2103.02(a) is alleged in a penalty action may raise an affirmative defense to the penalty as specified in this section.

(b) To establish the affirmative defense specified in (a), above, the owner or operator of the facility shall:

- (1) Comply with Env-A 911.04 relative to reporting permit deviations; and
- (2) Prove by a preponderance of the evidence that all of the circumstances identified in (c), below, have occurred.

(c) The circumstances that support an affirmative defense for the violation of a visible emission standard during a malfunction shall be as follows:

- (1) The excess emissions were caused by:
 - a. A sudden and not reasonably preventable breakdown of air pollution control equipment or process equipment; or
 - b. The failure of a process to operate in the normal or usual manner;
- (2) The excess emissions did not stem from any activity or event that could have been planned for or reasonably foreseen and could not have been avoided by better operation and maintenance practices;
- (3) Subject to (d), below, the air pollution control equipment or process equipment was maintained and operated in a manner consistent with good practice for minimizing emissions to the maximum extent practicable;
- (4) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (5) The owner or operator made repairs to the malfunctioning equipment or process as expeditiously as possible after the malfunction was discovered;
- (6) The amount and duration of the excess emissions, including any bypass, were minimized to the maximum extent practicable during periods of such emissions;
- (7) The owner or operator took all reasonable steps to minimize the impact of the excess emissions on ambient air quality;
- (8) The owner or operator ensured the continued operation of any monitoring system except as necessary to correct the malfunction; and
- (9) The owner or operator documented all actions taken during the period of excess emissions using contemporaneous operating logs or other reliable evidence.

(d) The requirement in (c)(3), above, shall not be construed to automatically require the shutdown of process equipment to minimize emissions.

(e) The affirmative defense provisions of this section shall not be available for:

(1) Claims for injunctive relief; or

(2) Failure to meet federally promulgated visible emission standards specified in 40 CFR 60 and 40 CFR 63.

(f) In considering an affirmative defense raised by an owner or operator, the department shall review the information provided pursuant to Env-A 911.04 and any other information the department deems material and relevant, which may include, but is not limited to, a physical inspection of the facility and review of documentation pertaining to the maintenance and operation of emission units and air pollution control equipment.

(g) This section shall not be construed as limiting the authority of EPA or citizens under the Act.

APPENDIX

Rule Section(s)	State Statute(s) Implemented
Env-A 2101	RSA 125-C:6, II
Env-A 2102	RSA 125-C:6, II
Env-A 2103	RSA 125-C:6, II

Readopt with amendment Env-A 2100, eff. 11-24-04 (doc. #8215), to read as follows:

CHAPTER Env-A 2100 PARTICULATE MATTER AND VISIBLE EMISSIONS STANDARDS

Statutory Authority: RSA 125-C:4:I(a) and (e)

PART Env-A 2101 PURPOSE AND APPLICABILITY

Env-A 2101.01 Purpose. The purpose of this chapter is to establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of this subtitle.

Env-A 2101.02 Applicability. The rules in this chapter shall apply within New Hampshire as specified in Env-A 2102.01 and Env-A 2103.01.

PART Env-A 2102 EMISSION STANDARDS FOR PARTICULATE MATTER

Env-A 2102.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of particulate matter emissions discharged to the ambient air through a stack or through an exhaust and ventilation system.

(b) Those sources of particulate matter emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Env-A 2102.02 Definitions. "Exhaust and ventilation system" means any system that removes and transports particulate matter from the point of generation to the ambient air.

Env-A 2102.03 Emission Standards for Particulate Matter.

(a) For any stationary source or device installed after February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed the emission standards specified for "New Devices" as listed in Table 2102-1, in (c), below.

(b) For any stationary source or device installed prior to or on February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed the emission standards specified for "Existing Devices" as listed in Table 2102-1, in (c), below.

(c) Particulate matter emission standards shall be as set forth in Table 2102-1, below:

Table 2102-1 Particulate Matter Emission Standards

Process Weight Rate (tons per hour)	Emission Standard for "New Devices" (pounds per hour)	Emission Standard for "Existing Devices" (pounds per hour)
0.025	0.36	0.43
0.05	0.55	0.68
0.25	1.53	1.99
0.5	2.58	3.17
2.5	7.58	9.35
5	12.0	14.85
10	19.2	23.62
30	40.0	49.31
40	42.5	51.03

Process Weight Rate (tons per hour)	Emission Standard for "New Devices" (pounds per hour)	Emission Standard for "Existing Devices" (pounds per hour)
60	46.3	55.55
90	49.0	58.88
100	51.2	61.53
500	69.0	82.75
1,000	77.6	93.11

Env-A 2102.04 Calculation of Particulate Matter Emission Standards.

(a) Where the process weight rate is not explicitly listed in Table 2102-1, the maximum allowable particulate matter emission rate shall be calculated using the applicable equation in (b) or (c), below, where:

(1) "E" means the maximum allowable particulate matter emission rate in pounds per hour (lb/hr); and

(2) "P" means the process weight rate in tons per hour (tons/hr).

(b) For a stationary source or device installed prior to or on February 18, 1972, if the process weight rate is:

(1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 5.05, as shown in the formula below:

$$E = 5.05 P^{0.67}$$

(2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 66.0, and then 48 shall be subtracted from that result, as shown in the formula below:

$$E = 66.0 P^{0.11} - 48$$

(c) For a stationary source or device installed after February 18, 1972, if the process weight rate is:

(1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 4.10, as in the formula below:

$$E = 4.10 P^{0.67}$$

(2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 55.0, and then 40 shall be subtracted from that result, as in the formula below:

$$E = 55.0 P^{0.11} - 40$$

PART Env-A 2103 VISIBLE EMISSION STANDARDS

Env-A 2103.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of visible emissions.

(b) Those sources of visible emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Env-A 2103.02 Visible Emission Standards.

(a) The owner or operator shall not cause or allow visible emissions from any stationary source or device subject to this part to exceed an average of 20 percent opacity for any continuous 6-minute period, ~~except for one period of 6 continuous minutes in any 60 minute period during startup, shutdown, or malfunction.~~

(b) Opacity shall be determined in accordance with Env-A 807.

Env-A 2103.03 Affirmative Defense to Penalty Action.

(a) *An owner or operator against whom a malfunction-based violation of Env-A 2103.02(a) is alleged in a penalty action may raise an affirmative defense to the penalty as specified in this section.*

(b) *To establish the affirmative defense specified in (a), above, the owner or operator of the facility shall:*

(1) *Comply with Env-A 911.04 relative to reporting permit deviations; and*

(2) *Prove by a preponderance of the evidence that all of the circumstances identified in (c), below, have occurred.*

(c) *The circumstances that support an affirmative defense for the violation of a visible emission standard during a malfunction shall be as follows:*

(1) *The excess emissions were caused by:*

a. *A sudden and not reasonably preventable breakdown of air pollution control equipment or process equipment; or*

b. *The failure of a process to operate in the normal or usual manner;*

(2) *The excess emissions did not stem from any activity or event that could have been planned for or reasonably foreseen and could not have been avoided by better operation and maintenance practices;*

(3) *Subject to (d), below, the air pollution control equipment or process equipment was maintained and operated in a manner consistent with good practice for minimizing emissions to the maximum extent practicable;*

(4) *The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;*

(5) *The owner or operator made repairs to the malfunctioning equipment or process as expeditiously as possible after the malfunction was discovered;*

(6) *The amount and duration of the excess emissions, including any bypass, were minimized to the maximum extent practicable during periods of such emissions;*

(7) *The owner or operator took all reasonable steps to minimize the impact of the excess emissions on ambient air quality;*

(8) *The owner or operator ensured the continued operation of any monitoring system except as necessary to correct the malfunction; and*

(9) *The owner or operator documented all actions taken during the period of excess emissions using contemporaneous operating logs or other reliable evidence.*

(d) The requirement in (c)(3), above, shall not be construed to automatically require the shutdown of process equipment to minimize emissions.

(e) The affirmative defense provisions of this section shall not be available for:

(1) Claims for injunctive relief; or

(2) Failure to meet federally promulgated visible emission standards specified in 40 CFR 60 and 40 CFR 63.

(f) In considering an affirmative defense raised by an owner or operator, the department shall review the information provided pursuant to Env-A 911.04 and any other information the department deems material and relevant, which may include, but is not limited to, a physical inspection of the facility and review of documentation pertaining to the maintenance and operation of emission units and air pollution control equipment.

(g) This section shall not be construed as limiting the authority of EPA or citizens under the Act.

APPENDIX

Rule Section(s)	State Statute(s) Implemented
Env-A 2101	RSA 125-C:6, II
Env-A 2102	RSA 125-C:6, II
Env-A 2103	RSA 125-C:6, II

ANNOTATIONS TO THE FINAL PROPOSAL FROM THE OFFICE OF
LEGISLATIVE SERVICES

MAR 29 2013

4/11

N 15

Final Proposal No. 2012-163

Date Filed 3-27-13

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2012-163

Rule Number Env-A 2100

1. Agency Name & Address:

NH Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

CONSENT
EDIT

2. RSA Authority: RSA 125-C:4, I(a) & (e)

3. Federal Authority: n/a

4. Type of Action:

- ☐ Adoption
☐ Amendment
☐ Repeal
☐ Readoption
☒ Readoption w/amendment

5. Short Title: Particulate Matter and Visible Emissions Standards

6. Contact person for copies and questions:

Name: Karla McManus,

Title: Planning and Rules Manager

Address: NH Dept. of Environmental Services
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

Phone #: (603) 271-6854

7. Yes ☐ No ☒ Agency requests Committee legal counsel review and delayed Committee review pursuant to RSA 541-A:12, I-a

8. The rulemaking notice appeared in the Rulemaking Register on November 15, 2012.

9. Yes ☐ N/A ☒ Agency notified policy committees, or House Speaker and Senate President, pursuant to RSA 541-A:10, I, because this is the first time this rule or its amendments have been proposed to implement newly-enacted state authority.

SEE THE INSTRUCTIONS--PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET
AND 2 COPIES OF THE FOLLOWING:
(and numbered correspondingly)

10. The "Final Proposal-Fixed Text", including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

11. Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes ☒ N/A ☐ The "Final Proposal-Annotated Text" indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

13. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

RULEMAKING NOTICE - Page 2

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 12:174, dated 11/08/12:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds. The existing rule is part of the state implementation plan which has been approved by the US Environmental Protection Agency pursuant to Section 110 of the Clean Air Act (42 U.S.C. § 7410) and is required by the Federal Clean Air Act to meet the National Ambient Air Quality Standards.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

None of the sources affected by these rules is owned by a political subdivision. Accordingly, the proposed rules do not violate Part I, Article 28-a of the New Hampshire Constitution because they do not assign any new, modified, or expanded programs or responsibilities to political subdivisions of the state in such a way as to necessitate local expenditures.

(d) The requirement in (c)(3), above, shall not be construed to automatically require the shutdown of process equipment to minimize emissions.

(e) The affirmative defense provisions of this section shall not be available for:

(1) Claims for injunctive relief; or

(2) Failure to meet federally promulgated visible emission standards specified in 40 CFR 60 and 40 CFR 63.

(f) In considering an affirmative defense raised by an owner or operator, the department shall review the information provided pursuant to Env-A 911.04 and any other information the department deems material and relevant, which may include, but is not limited to, a physical inspection of the facility and review of documentation pertaining to the maintenance and operation of emission units and air pollution control equipment.

(g) This section shall not be construed as limiting the authority of EPA or citizens under the Act.

Edit. Replace with "including, but not limited to", to avoid use of "may."

APPENDIX

Rule Section(s)	State Statute(s) Implemented
Env-A 2101	RSA 125-C:6, II
Env-A 2102	RSA 125-C:6, II
Env-A 2103	RSA 125-C:6, II

APPROVAL OF THE RULE BY THE JOINT LEGISLATIVE COMMITTEE ON
ADMINISTRATIVE RULES

sd

STATE OF NEW HAMPSHIRE

JILL K. SIEVEKING
DIRECTOR



OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE
107 NORTH MAIN STREET, ROOM 109
CONCORD, NEW HAMPSHIRE 03301-4951

April 19, 2013

NOTICE NO. 2012-163

RULE # Env-A 2100

RELATIVE TO: Particulate Matter and Visible Emissions Standards

The Joint Legislative Committee on Administrative Rules has reviewed the Final Proposal on the above cited rule at its meeting on APRIL 19, 2013.

The Committee voted to approve the proposal. You may proceed to adopt the rules in the proposal and file them with the Office of Legislative Services, Administrative Rules. If the effective life of any existing, regular rules in your proposal was extended during the rulemaking proceeding pursuant to RSA 541-A:14-a, then all the rules in the proposal must be adopted within **30 days** of Committee approval. The rules also must be filed with an effective date not more than **60 days** from the date of filing. See Section 1.11 of Chapter 3 in the N.H. Drafting and Procedure Manual for Administrative Rules (Manual).

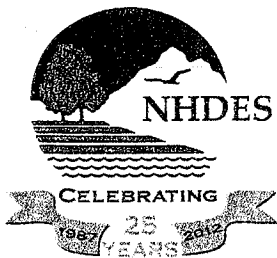
When filing the final rules, you are also required to file a cover letter indicating the date of final adoption and certifying the final rules are a true copy. See Section 2.21 of Chapter 3 in the Manual. The rules will become effective either at (1) 12:01 a.m. on the day after the filing, (2) 12:01 a.m. on the date specified in the cover letter to me when the rule is filed, or (3) such other date and time as specified in the cover letter, provided that the filing occurs before such effective date and time. Please send two (2) copies of the adopted rules.

Sincerely yours,

A handwritten signature in cursive script that reads "Jill K. Sieveking".

Jill K. Sieveking, Director
Office of Legislative Services

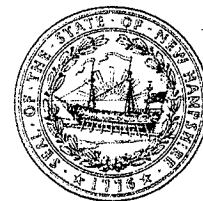
ADOPTED RULE



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



April 22, 2013

Jill K. Sieveking, Director
c/o OLS, Division of Administrative Rules
State House Annex, Room 219
Concord, NH 03301

Re: Adoption of Final Rules, FP #2012-163

Dear Director Sieveking:

Please be advised that I, as Commissioner of the Department of Environmental Services, have adopted the following rules:

Env-A 2100: Particulate Matter and Visible Emissions Standards

The Joint Legislative Committee on Administrative Rules approved these rules at its meeting on April 19, 2013.

A copy of the adopted rules is being filed electronically, concurrent with the e-filing of this adoption letter. The original, signed adoption letter is being sent separately by messenger mail for your records.

I, Thomas S. Burack, Commissioner of the Department of Environmental Services, hereby certify that the enclosed are true copies of the rules I have adopted.

Sincerely,

Thomas S. Burack
Commissioner

Enclosure

cc: Gretchen Hamel, DES Legal Unit
Public Information and Permitting Office

ec: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Karla McManus, DES ARD Planning and Rules Manager

As of April 23, 2013, Env-A 2100 reads as follows:

CHAPTER Env-A 2100 PARTICULATE MATTER AND VISIBLE EMISSIONS STANDARDS

Statutory Authority: RSA 125-C:4:I(a) and (e)

PART Env-A 2101 PURPOSE AND APPLICABILITY

Env-A 2101.01 Purpose. The purpose of this chapter is to establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of this subtitle.

Env-A 2101.02 Applicability. The rules in this chapter shall apply within New Hampshire as specified in Env-A 2102.01 and Env-A 2103.01.

PART Env-A 2102 EMISSION STANDARDS FOR PARTICULATE MATTER

Env-A 2102.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of particulate matter emissions discharged to the ambient air through a stack or through an exhaust and ventilation system.

(b) Those sources of particulate matter emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Env-A 2102.02 Definitions. "Exhaust and ventilation system" means any system that removes and transports particulate matter from the point of generation to the ambient air.

Env-A 2102.03 Emission Standards for Particulate Matter.

(a) For any stationary source or device installed after February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed the emission standards specified for "New Devices" as listed in Table 2102-1, in (c), below.

(b) For any stationary source or device installed prior to or on February 18, 1972, the owner or operator shall not cause or allow the emission of particulate matter at such source or device to exceed the emission standards specified for "Existing Devices" as listed in Table 2102-1, in (c), below.

(c) Particulate matter emission standards shall be as set forth in Table 2102-1, below:

Table 2102-1 Particulate Matter Emission Standards

Process Weight Rate (tons per hour)	Emission Standard for "New Devices" (pounds per hour)	Emission Standard for "Existing Devices" (pounds per hour)
0.025	0.36	0.43
0.05	0.55	0.68
0.25	1.53	1.99
0.5	2.58	3.17
2.5	7.58	9.35
5	12.0	14.85
10	19.2	23.62
30	40.0	49.31
40	42.5	51.03

Process Weight Rate (tons per hour)	Emission Standard for "New Devices" (pounds per hour)	Emission Standard for "Existing Devices" (pounds per hour)
60	46.3	55.55
90	49.0	58.88
100	51.2	61.53
500	69.0	82.75
1,000	77.6	93.11

Env-A 2102.04 Calculation of Particulate Matter Emission Standards.

(a) Where the process weight rate is not explicitly listed in Table 2102-1, the maximum allowable particulate matter emission rate shall be calculated using the applicable equation in (b) or (c), below, where:

(1) "E" means the maximum allowable particulate matter emission rate in pounds per hour (lb/hr); and

(2) "P" means the process weight rate in tons per hour (tons/hr).

(b) For a stationary source or device installed prior to or on February 18, 1972, if the process weight rate is:

(1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 5.05, as shown in the formula below:

$$E = 5.05 P^{0.67}$$

(2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 66.0, and then 48 shall be subtracted from that result, as shown in the formula below:

$$E = 66.0 P^{0.11} - 48$$

(c) For a stationary source or device installed after February 18, 1972, if the process weight rate is:

(1) Up to 30 tons/hr, P shall be raised to the 0.67 power and multiplied by 4.10, as in the formula below:

$$E = 4.10 P^{0.67}$$

(2) In excess of 30 tons/hr, P shall be raised to the 0.11 power and multiplied by 55.0, and then 40 shall be subtracted from that result, as in the formula below:

$$E = 55.0 P^{0.11} - 40$$

PART Env-A 2103 VISIBLE EMISSION STANDARDS

Env-A 2103.01 Applicability.

(a) Subject to (b), below, this part shall apply to any stationary source or device that is a source of visible emissions.

(b) Those sources of visible emissions that are governed specifically by other chapters, parts, or sections of this subtitle shall be controlled by those particular chapters, parts, or sections.

Env-A 2103.02 Visible Emission Standards.

- (a) The owner or operator shall not cause or allow visible emissions from any stationary source or device subject to this part to exceed an average of 20 percent opacity for any continuous 6-minute period.
- (b) Opacity shall be determined in accordance with Env-A 807.

Env-A 2103.03 Affirmative Defense to Penalty Action.

(a) An owner or operator against whom a malfunction-based violation of Env-A 2103.02(a) is alleged in a penalty action may raise an affirmative defense to the penalty as specified in this section.

(b) To establish the affirmative defense specified in (a), above, the owner or operator of the facility shall:

- (1) Comply with Env-A 911.04 relative to reporting permit deviations; and
- (2) Prove by a preponderance of the evidence that all of the circumstances identified in (c), below, have occurred.

(c) The circumstances that support an affirmative defense for the violation of a visible emission standard during a malfunction shall be as follows:

- (1) The excess emissions were caused by:
 - a. A sudden and not reasonably preventable breakdown of air pollution control equipment or process equipment; or
 - b. The failure of a process to operate in the normal or usual manner;
- (2) The excess emissions did not stem from any activity or event that could have been planned for or reasonably foreseen and could not have been avoided by better operation and maintenance practices;
- (3) Subject to (d), below, the air pollution control equipment or process equipment was maintained and operated in a manner consistent with good practice for minimizing emissions to the maximum extent practicable;
- (4) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (5) The owner or operator made repairs to the malfunctioning equipment or process as expeditiously as possible after the malfunction was discovered;
- (6) The amount and duration of the excess emissions, including any bypass, were minimized to the maximum extent practicable during periods of such emissions;
- (7) The owner or operator took all reasonable steps to minimize the impact of the excess emissions on ambient air quality;
- (8) The owner or operator ensured the continued operation of any monitoring system except as necessary to correct the malfunction; and
- (9) The owner or operator documented all actions taken during the period of excess emissions using contemporaneous operating logs or other reliable evidence.

(d) The requirement in (c)(3), above, shall not be construed to automatically require the shutdown of process equipment to minimize emissions.

(e) The affirmative defense provisions of this section shall not be available for:

(1) Claims for injunctive relief; or

(2) Failure to meet federally promulgated visible emission standards specified in 40 CFR 60 and 40 CFR 63.

(f) In considering an affirmative defense raised by an owner or operator, the department shall review the information provided pursuant to Env-A 911.04 and any other information the department deems material and relevant, which may include, but is not limited to, a physical inspection of the facility and review of documentation pertaining to the maintenance and operation of emission units and air pollution control equipment.

(g) This section shall not be construed as limiting the authority of EPA or citizens under the Act.

APPENDIX

Rule Section(s)	State Statute(s) Implemented
Env-A 2101	RSA 125-C:6, II
Env-A 2102	RSA 125-C:6, II
Env-A 2103	RSA 125-C:6, II

EVIDENCE OF PUBLIC NOTICE

40 CFR Part 51, Appendix V, 2.1(f)

STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES

STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES AIR RESOURCES DIVISION
CONCORD, NH NOTICE OF PUBLIC HEARING for DRAFT FINAL PROPOSALS In accordance with RSA 541-A:6 and N.H. Admin. Rule Env-A 204.01(b) and 40 CFR 51.102, notice is hereby given that the New Hampshire Department of Environmental Services, Air Resources Division (the Department), will hold an additional public hearing on proposed amendments to the NH Code of Administrative Rules and the State Implementation Plan on Friday, March 8, 2013. The public hearing will be held in Room 112, first floor of the offices of the Department, 29 Hazen Drive, Concord, NH. At 10:30 a.m. on Friday, March 8, 2013, the Department will receive testimony from the public concerning the draft final proposed readoption with amendments of two rules, Env-A 2100-Particulate Matter and Visible Emissions Standards, and Env-A 2400 - Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations. The existing rules, Env-A 2100, establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of this subtitle. The existing rules, Env-A 2400, establish emission standards for particulate matter and visible emissions from ferrous and non-ferrous foundries, smelters, and investment casting operations. On Friday, January 4, 2013, the department held a public hearing on these two rules. As a result of the comments received and resulting substantial change made to the rules, the Department has decided to hold a public hearing on the draft final proposal of Env-A 2100 and Env-A 2400. The draft final proposal of both of these rules contains revisions to the initial proposal; specifically, Env-A 2103.03 and Env-A 2405.01 substitute an Affirmative Defense section in lieu of the exception for opacity exceedances during startup, shutdown or malfunction. Testimony may be presented orally and/or in writing at the public hearing. The Department will receive written comments on the draft final proposed rules until 4:00 p.m. on Friday, March 8, 2013. Please submit written comments to Karla McManus, Planning and Rules Manager, Air Resources Division, NH Department of Environmental Services, P.O. Box 95, Concord, NH 03302-0095, Fax (603) 271-7053 or e-mail at Karla.McManus@des.nh.gov. Copies of all documentation pertaining to rulemakings for all air rules are available for inspection at the offices of the Department at the address stated above. The draft final proposed rules are also posted at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>. Questions regarding the proposed rulemakings should be directed to Karla McManus at (603) 271-6854. Thomas S. Burack Commissioner NH Department of Environmental Services Dated: February 8, 2013

Appeared in: **The Union Leader** on Friday, 02/08/2013

[Back](#)

ENV-A 2100 + 2406

UNION LEADER CORPORATION

P O BOX 9513
MANCHESTER, NH 03108

0000059625
STATE OF NH-AIR RESOURCES COMM
VALERIE DAVID
PO BOX 95
CONCORD NH 03302-0095

I hereby certify that the legal notice: (0000424280) PUB HEARING 3/8 10:30AM
was published in the New Hampshire Union Leader
printed at Manchester, NH by the Union Leader Corp.
On:
02/08/2013.

Stat of N w Hampshire
Hillsborough County

Subscribed and sworn to before me this

8

day of

February 2013

Phyllis E Manning

Notary Public



STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
AIR RESOURCES DIVISION
CONCORD, NH

NOTICE OF PUBLIC HEARING

In accordance with RSA 541-A:6 and N.H. Admin. Rule Env-A 204.01(b) and 40 CFR § 51.102, notice is hereby given that the New Hampshire Department of Environmental Services, Air Resources Division (the Department), will hold a public hearing on proposed amendments to the NH Code of Administrative Rules and the State Implementation Plan on **Friday, January 4, 2013**. The public hearing will be held in Room 112, first floor of the offices of the Department, 29 Hazen Drive, Concord, NH.

At **10:00 a.m. on Friday, January 4, 2013**, the Department will receive testimony from the public concerning the proposed readoption with amendments of three rules, **Env-A 2100-Particulate Matter and Visible Emissions Standards; Env-A 2400 – Ferrous and Non-Ferrous Foundries, Smelters, and Investment Casting Operations; Env-A 2700 – Hot Mix Asphalt Plants**.

The existing rules, Env-A 2100, establish standards for particulate matter and visible emissions for those stationary sources or devices that are not specifically regulated pursuant to any other chapter, part, or section of this subtitle. The existing rules, Env-A 2400, establish emission standards for particulate matter and visible emissions from ferrous and non-ferrous foundries, smelters, and investment casting operations. There are seven foundries in New Hampshire, the emissions from which could be harmful or irritating to the public if not controlled by this chapter. The existing rules, Env-A 2700, establish standards for regulating visible emissions, particulate matter emissions, and fugitive emissions from hot mix asphalt plants. All three of these rules are proposed to be readopted because they are scheduled to expire on November 24, 2012; **pursuant to RSA 541-A:14-a, I, the existing rules will continue in effect for the duration of this readoption proceeding**. Revisions are proposed to increase the clarity of the rules.

Testimony may be presented orally and/or in writing at the public hearing. The Department will receive written comments on the proposed rules until **4:00 p.m. on Tuesday, January 15, 2013**. Please submit written comments to Karla McManus, Planning and Rules Manager, Air Resources Division, NH Department of Environmental Services, P.O. Box 95, Concord, NH 03302-0095, Fax (603) 271-7053 or e-mail at Karla.McManus@des.nh.gov.

Copies of all documentation pertaining to rulemakings for all air rules are available for inspection at the offices of the Department at the address stated above. The proposed rule is also posted at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>. Questions regarding the proposed rulemakings should be directed to Karla McManus at (603) 271-6854.

Thomas S. Burack

Commissioner
NH Department of Environmental Services

Dated: November 16, 2012

ENV-A 2100, 2400, 2700

UNION LEADER CORPORATION

P O BOX 9513
MANCHESTER, NH 03108

**RECEIVED
NEW HAMPSHIRE**

DEC 03 2012

AIR RESOURCES DIVISION

0000059625
STATE OF NH AIR RESOURCES COMM
VALERIE DAVID
PO BOX 95
CONCORD NH 03302-0095

I hereby certify that the legal notice: (0000325410) PUB. HEARING- 1/4/13 10AM
was published in the New Hampshire Union Leader
printed at Manchester, NH by the Union Leader Corp.
On:
11/21/2012.

State of New Hampshire
Hillsborough County

Subscribed and sworn to before me this

21 day of November 2012

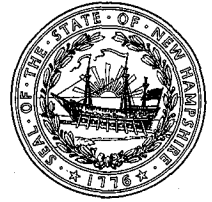
Shylis E Manning
Notary Public

CERTIFICATION OF PUBLIC HEARING

40 CFR Part 51, Appendix V, 2.1(g)



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

July 16, 2013

I hereby certify that:

In accordance with N.H. Admin. Rule Env-A 204.01(b) and 40 CFR § 51.102, public notice was given that the New Hampshire Department of Environmental Services, Air Resources Division (DES), intended to submit for the approval of the U.S. Environmental Protection Agency (EPA) revisions to the New Hampshire State Implementation Plan (SIP) which readopted and amended **Env-A 2100: Particulate Matter and Visible Emissions Standards**.

A public hearing on the Rules and the SIP revision was held on January 4, 2013 at 10:00 a.m., at DES, Rooms 112, 29 Hazen Drive, Concord, NH. Opportunity was provided to receive oral comments during the hearing and written comments at any time up to **4:00 p.m. on Tuesday, January 15, 2013**, for consideration by the DES in making a final decision. No members of the public attended the hearing, so it was determined that it was not necessary to present the proposed rule and record the hearing. The hearing was closed at 10:12 a.m.

A copy of the SIP revision was available for public inspection at the DES offices at 29 Hazen Drive, Concord, NH during regular working hours from 8:00 a.m. to 4:00 p.m., Monday through Friday, throughout the comment period. The SIP revision was also available for downloading from the DES website at:
<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>.

The notice was published in the *Union Leader*, a newspaper of general, statewide circulation, on Wednesday, November 21, 2012, more than thirty days prior to the date of the hearing.

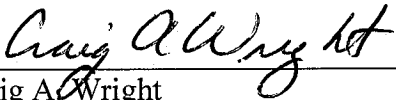
As a result of the number of comments received and resulting changes made to the rule, the DES decided to hold a public hearing on the draft final proposal of Env-A 2100 and the SIP revision. It was held on March 8, 2013 at 10:30 a.m., at DES, Room 112, 29 Hazen Drive, Concord, NH.

Opportunity was provided to receive oral comments during the hearing and written comments at any time up to **4:00 p.m. on Friday, March 8, 2013**, for consideration by the DES in making a final decision. No members of the public attended the hearing, so it was determined that it was not necessary to present the proposed rule and record the hearing. The hearing was closed at 10:42 a.m.

A copy of the SIP revision was available for public inspection at the DES offices at 29 Hazen Drive, Concord, NH during regular working hours from 8:00 a.m. to 4:00 p.m., Monday through Friday, throughout the comment period. The SIP revision was also available for downloading from the DES website at:
<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>.

The notice was published in the *Union Leader*, a newspaper of general, statewide circulation, on Friday, February 8, 2013, thirty days prior to the date of the hearing.

The above statements are true to the best of my knowledge and belief.



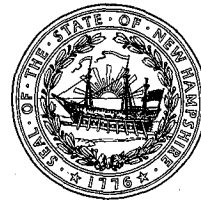
Craig A. Wright
Acting Director
Air Resources Division

**COMPILATION OF PUBLIC COMMENTS AND NEW
HAMPSHIRE'S RESPONSE THERETO**

40 CFR Part 51, Appendix V, 2.1(h)



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

**FP 2012-163, Env-A 2100 Particulate Matter and Visible Emissions Standards
Summary of Comments on Initial Proposal and Draft Final Proposal with DES Responses
March 26, 2013**

Introduction

DES made substantive revisions in response to comments received from the U.S. Environmental Protection Agency (EPA) on the Initial Proposal for the readoption of Env-A 2100 relative to Particulate Matter and Visible Emissions Standards. Because of this, DES prepared a draft final proposal (Draft FP), as now authorized by RSA 541-A:11, I(c), and held a public hearing on the Draft FP on March 8, 2013. DES received written comments on the draft FP from Conservation Law Foundation (CLF). The EPA and CLF comments and DES responses thereto are summarized below.

Initial Proposal

Env-A 2103.02 - Visible Emission Standards

Comment: EPA states that this rule exempts sources from complying with the opacity standard, and that such an exemption is not allowed by the Clean Air Act.

DES Response: DES has deleted the 6-minute exemption previously allowed in Env-A 2103.02 and has proposed in the Draft Final Proposal an affirmative defense provision for opacity exceedances during startups, shutdowns, and malfunctions.

Draft Final Proposal

Env-A 2103.02 - Visible Emission Standards

Comment: CLF supports DES's decision to eliminate visible emissions exemptions from the current version of Env-A 2100, as reflected in the Draft FP.

DES Response: DES acknowledges this comment in support of its proposed change to Env-A 2103.02 and intends to adopt the rule without the exemption.

Env-A 2103.03 - Affirmative Defenses

Comment #1: CLF disagrees with DES's decision to excuse certain violations of the Act through adoption of the proposed affirmative defense provisions on the basis that the Clean Air Act is a strict liability statute.

DES Response: The term "affirmative defense" may be a misnomer here, in that successfully employing it does not excuse violations of the Act; it allows a source to demonstrate that it could not have complied with the standard and, therefore, should not be fined for that violation. A source that successfully asserts the defense could still be subject to citizen suits and requests for injunctive relief because of the underlying violation.

Comment #2: DES should ensure that its affirmative defense provisions are consistent with EPA's most recent clarification of its affirmative defense policy. Specifically, EPA's February 22, 2013 proposed rule (78 Fed. Reg. 12,460) disallows startup and shutdown affirmative defenses.

DES Response: DES acknowledges that EPA is proposing to disallow affirmative defenses for startups and shutdowns. On page 12470 of the referenced Federal Register notice, EPA states that SIP provisions should encourage compliance during events that are within the source's control, and thus affirmative

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-1370 • Fax: (603) 271-1381 • TDD Access: Relay NH 1-800-735-2964

defenses for excess emissions during planned startup and shutdown are inappropriate, unlike those for excess emissions during malfunctions. DES does not agree that opacity exceedances are always within the control of the operator of a fuel-fired device. Env-A 2100 does not apply to fuel-fired devices, however, and DES believes that sources subject to this chapter should be able to control visible emissions during startups and shutdowns. Therefore, with respect to this chapter and Env-A 2400, DES will follow EPA's proposed guidance and remove the proposed affirmative defense for startups and shutdowns.

Comment #3: In Attachment A of CLF's comments, CLF provides specific language changes to the proposed affirmative defense provisions in Env-A 2103.03. In Env-A 2103.03(b)(1) and (h), CLF suggests replacing the reference to Env-A 911.04 with the actual language from Env-A 911.04(b) and (d). CLF's reason for this suggestion is that Env-A 911.04 is not in the State Implementation Plan (SIP).

DES Response: Most of Env-A 900, including 911.04, is now in the SIP, effective January 4, 2013. See 77 FR 66388 (Nov. 5, 2012). Therefore, repeating that language in Env-A 2100 is unnecessary.

Comment #4: In Env-A 2103.03(b)(2), CLF suggests replacing "one or more" with "all", since EPA requires that all of the listed circumstances be satisfied.

DES Response: The original language referred to the circumstances for malfunctions in Env-A 2103.03(c) and the circumstances for startups/shutdowns Env-A 2103.03(e), which is why it referred to compliance with "one or more" of the circumstances in (c) or (e), as applicable. However, since DES has agreed to delete the affirmative defense provisions for startups/shutdowns, the suggested language is more appropriate and will be adopted by DES.

Comment #5: In Env-A 2103.03(c)(1), CLF suggests adding the words "unavoidable" and "beyond the control" to ensure that the provision reads as stringently as required by EPA.

DES Response: The first circumstance, listed in subparagraph (1), is the happening of an equipment failure causing excess visible emissions. Subparagraph (2) discusses whether the problem could have been reasonably foreseen or avoided, and subparagraph (8) discusses whether the problem was part of a recurring pattern. Thus, subparagraph (1) establishes that the event we may end up agreeing was a malfunction happened, and the other two subparagraphs give the circumstances that prove it was a malfunction. DES considers it duplicative to require a source to prove that the event was beyond its control several times when asserting an affirmative defense and, consequently, does not believe these changes need to be made.

Comment #6: In Env-A 2103.03(c)(2), CLF suggests deleting the word "reasonably" and adding the words "and could not have been avoided by better operation and maintenance practices" so that the provision is as stringent as EPA's guidance.

DES Response: DES believes that without the word "reasonably," it would be impossible for anyone to successfully assert this affirmative defense. Thus, DES intends to retain "reasonably" but agrees that the additional wording should be added to be consistent with EPA's guidance.

Comment #7: In Env-A 2103.03(c)(3), CLF suggests deleting the words "after the malfunction was discovered" and adding the following: "when the operator knew or should have known that applicable emissions limitations were being exceeded. Off-shift labor and overtime must have been utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable." CLF believes these changes are needed to make the provision as stringent as EPA's guidance.

DES Response: While DES understands that it seems more stringent to use EPA's language, in reality, one can not make repairs to equipment that one does not know is malfunctioning, even if one should have

known that it was malfunctioning. The concern about how quickly one finds the malfunction is addressed in subparagraph (4), which requires the amount and duration of the excess emissions to be minimized to the extent practicable. In addition, it is not necessary to require the use of off-shift labor or overtime to ensure that repairs are made expeditiously. Some repairs can be made during the regular shift, and some can be made only by the original manufacturer or engineering team. Each situation is unique and can best be decided on a case-specific basis. DES has not changed the wording of this subparagraph.

Comment #8: In Env-A 2103.03(c)(4), CLF suggests adding the word "maximum" so that the provision is consistent with EPA's guidance.

DES Response: DES agrees and will add the word "maximum" before "extent."

Comment #9: In Env-A 2103.03(c)(5), CLF suggests replacing the word "reasonable" with "all possible" for consistency with EPA's guidance.

DES Response: This is another instance where DES believes a "reasonable person" standard is preferable to EPA's guidance. Reasonable people could disagree on what steps are "possible." DES will add the word "all" before "reasonable."

Comment #10: In Env-A 2103.03(c)(7), CLF suggests adding the words "properly signed" to ensure the required level of stringency.

DES Response: DES does not require log books be signed to prove their authenticity. This suggestion was not incorporated into the rule.

Comment #11: In Env-A 2103.03(c)(9), CLF suggests deleting the phrases "Subject to (d) below" and "to the maximum extent practicable" to make the provision as stringent as EPA's guidance.

DES Response: The phrase "to the maximum extent practicable" is included in EPA's guidance, so it will not be removed. The phrase "Subject to (d) below" will also be retained, for the reason given below.

Comment #12: CLF suggests removing Env-A 2103.03(d) to make (c)(9) as stringent as EPA's standard. The paragraph reads: "The provision in (c)(9), above, shall not be construed to automatically require the shutdown of process equipment to minimize emissions."

DES Response: DES agrees that this language is not in EPA's guidance, but disagrees that it makes the proposed rule any less stringent. EPA's guidance makes clear that an affirmative defense for excess emissions during a malfunction is appropriate only for the period of time necessary to modify or curtail operations to come into compliance. In other words, EPA does not "automatically require the shutdown of process equipment to minimize emissions," but does require the source to take "reasonable steps to minimize the impact of the excess emissions on ambient air quality" (subparagraph 5) and to maintain and operate the equipment in a manner consistent with good practice for minimizing emissions to the maximum extent practicable (subparagraph 9). There are times when repairs can be made so quickly that a shutdown of process equipment is not necessary, and paragraph (d) recognizes that fact. Therefore, this subsection is being retained.